

**Written Statement of Robert M. Appleton Former Chairman of the United Nations Procurement Task Force, to the United States House of Representatives, Committee on Foreign Affairs**

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I would like to thank this Committee for the invitation to appear here today. I am most honored to have been considered. I should emphasize that I am not here on behalf of my current employer, but as a concerned private citizen and former senior official in the United Nations. What I am about to say is as a result of my direct and personal experience from four years in the United Nations involved in UN oversight and investigating fraud and corruption in the world body. What follows is also based upon my concern for the Organization, those professionals who serve and those that have served honorably in and on behalf of it, and the taxpayers who fund it.

For three years, from 2006 through 2008, I had the honour of serving as the Deputy Chairman, and then Chairman, of the United Nations Procurement Task Force-or “PTF”, a special investigations unit created within the United Nations Secretariat, and Office of Internal Oversight Services (OIOS). The PTF was created by the UN Administration in January of 2006 to investigate fraud, financial misappropriation, corruption and misconduct in the \$25 billion of annual Secretariat and peacekeeping spending, the UN’s peacekeeping missions worldwide, as well as the UN’s overseas offices. The PTF was established by then Secretary-General Kofi Annan in the wake of the investigation of the Oil-for-Food Program (the “Independent Inquiry Committee”) headed by former US Federal Reserve Chairman Paul Volcker in which I had served as Special Counsel and Deputy Chief Legal Counsel. The Oil-for-Food Investigation had uncovered circumstances that raised concerns that other such fraud schemes might also exist, as well as concerns at the time about the investigative capacity for such matters within the UN. Thus, the PTF was given the mandate and authority to examine UN contracting for fraud and corruption.

By virtue of the rapidity and the manner in which it was created, the PTF was formed as a temporary, ad hoc, division that, while housed in the Office of Internal Oversight Services (OIOS), was not a fully integrated division of OIOS. The Office of Internal Oversight Services is the principal entity in the UN responsible for oversight, audit, investigation and evaluation. It is the only entity in the UN that truly has the mandate and the resources to carry out viable investigations. OIOS was created as a result of a previous procurement scandal, in 1994. Although established within OIOS, and answerable to the Under Secretary General of OIOS, the PTF was separate from OIOS’s permanent investigations Unit and had received nearly all of Investigations Division’s fraud and corruption cases, open and closed. Because of its intended short-term and special nature, the PTF’s short term mandate and funding had to be extended by the General Assembly on a yearly basis. Although the PTF inherited 500 cases from OIOS, it also received all fraud and corruption referrals on a rolling basis during its existence. Its mandate was expanded by the Under Secretary General of OIOS to handle all procurement cases.

Over three years, this 26 person investigative Unit, comprised of accomplished professionals with extensive relevant experience and specific backgrounds and expertise in investigating and prosecuting white collar fraud, from 16 different countries, conducted more than 300 fraud and corruption investigations, and issued 36 major reports –complete with findings and conclusions and 187 recommendations. The investigators were considered staff of the UN, having been given fixed term contracts-however they were temporary, and they did not have permanent contracts within

the Organization. Our recommendations included referrals to national authorities for criminal prosecution; legal advice and proposals based upon our previous experience to recover losses and damages arising out of the misconduct that had been identified; guidance with regard to appropriate action to take against staff members, individuals and companies in those cases in which fraud or financial malfeasance had been identified; and the pursuit of misconduct charges against staff for violations of rules and regulations of the Organization.

Through these investigations, we identified at least 20 major fraud schemes, hundreds of millions in losses and waste, and more than \$1 billion in tainted UN contracts. As a result of our work, a sanctions panel and procedure for corrupt vendors was created, and fully functioning. In the three years of the PTF's existence, forty seven vendors were penalized through temporary and permanent debarments for violations of procurement rules, fraud or corruption, based upon our reports that were affirmed by the Sanctions Panel. It was the first time that an internal investigative body conducted serious investigations of external parties engaged with the UN for commercial activity. Summaries of some of the results of the PTF can be found in two published General Assembly reports A/62/272, and A/63/329. Most of the actual reports of investigation, however, have never been made public because of the UN's disclosure policy.

Importantly, the PTF did not discriminate in its approach to cases and investigations—addressing all matters of fraud, financial misappropriation and loss, regardless of the seniority, stature, position or host country of the individual or official, or size, location or composition of the company or vendor. Despite claims to the contrary by some Member States, the UN Board of Auditors identified that individuals and companies from Western countries made up a large majority of the subjects of PTF investigations.

In those cases in which the PTF found fraud or other illegality, its results were largely substantiated by national courts of Member States to whom the findings were presented. An audit that was conducted of the PTF's operations in 2008 by the UN Board of Auditors found its methods appropriate, its staff well qualified, and that its existence no doubt served as a deterrent to fraud and corruption. At least five prosecutions by national authorities resulted from, or were supported by, PTF investigations, although, as will be explained herein, many more could have been pursued but for a lack of will on the part of the UN Administration, and effort on the part of OIOS. Nevertheless, much success was achieved despite all the impediments. In one of our most significant cases pursued by the United States Attorney's Office in the Southern District of New York in 2007, a senior procurement official, Mr. Sanjaya Bahel and an agent of a large UN vendor were convicted, Nishan Kohli, after a two month trial, of engaging in \$100 million fraud, collusion and bribery in connection in connection with a series of UN contracts. The case was largely based on the evidence gathered by the PTF and its 86 page Investigation Report. The procurement official was subsequently sentenced to 8 and one half years imprisonment, fined and the company involved order to pay restitution. The PTF's evidence and analyses, was used, and is still being used, in several other investigations by national and international bodies in other fraud and corruption cases that are being pursued.

However, despite the confirmation of the accuracy of the findings of the PTF in many cases, most unfortunately, the efforts of the PTF were opposed by certain Member State delegations that came to the defense of either officials who were nationals, or their companies or citizens. Because

the PTF was “ad hoc,” and created for a specific purpose, it was subject to continued appropriations from the UN General Assembly on a yearly basis. Funding in the UN is by consensus, meaning, largely that all Member States must agree. The General Assembly was deeply involved in decisions involving oversight, including the future and financial appropriations for PTF. In considering further funding, the General Assembly, through its Advisory Committee on Budget and Administration (ACABQ) and its budget committee, the Fifth Committee, held regular hearings, for significant to review and approve oversight activities, mandate, staffing and funding for the PTF and OIOS. .

Because the PTF undertook several high profile investigations of senior UN officials, diplomats and large value contracts in the jurisdictions of several Member States, the PTF was the subject of criticism and retaliation from the delegations of a few Member States whose senior UN officials, diplomats, companies or citizens were the subject of PTF investigations. The UN Administration accepted the PTF, but showed lethargy in moving forward on many of its recommendations to pursue matters in civil courts or charging wrongdoers with misconduct. Quite apart from any political pressures exerted on it, the UN’s Legal Unit, lacking in litigation experience and expertise, simply did not have the skill or energy in most instances to further the cases externally. In three years of appearances before the UN General Assembly, I was routinely presented with the same sets of questions in General Assembly hearings: concerning the identities of my staff, how they were selected, the “due process” afforded subjects, how investigations are undertaken, etc. Significantly, in my many appearances before these Committees rarely was I asked about the substance of our investigations, our findings or our recommendations. Allegations of selectivity in investigations were routinely pressed, as were claims of due process violations-all of which were ultimately found to without merit.

Prior to the expiration of the PTF at the end of 2008, the General Assembly, at the behest of one of the Member States that opposed our efforts, commissioned an audit by the UN Board of Auditors of the PTF and its activities. When the Board of Auditors did not find any due process violations or abuses, and further concluded that the PTF’s methods and operations were fully compliant with UN rules, regulations and standards, that it did not selectively target certain individuals, regions or countries, and that the staff was found to be well qualified, no mention was made of these facts by the General Assembly, no apology was offered, and no change in the approach of the opposition occurred.

The hostility to the unique status and independence of the PTF from the Member States that opposed its investigations finally led to the PTF’s demise. In 2008, these Member States were able to successfully block further funding of the Unit by the General Assembly, and the PTF was forced to close at the end of 2008 – although the US and other Member States succeeded in mandating by General Assembly resolution that the caseload and expertise of PTF be transferred to the Investigations Division of OIOS. I note that even terminating the PTF was not sufficient for some of its opposition. At the end of December, 2008, in the wee hours of budget negotiations, prior to finalization of the budget resolution for 2009, one Member State attempted to insert language in the Resolution that would ban any member of the PTF from transferring into the Investigations Division of OIOS or any other UN position for a period of three years. Even if the PTF’s investigations were unsound, and it had reached unsupportable conclusions, retaliation against an investigative unit because of the fact of its investigations is contrary to the very basic and well established principles of the common law, as well as the basic founding principles of the United Nations Charter.

Even if we were wrong in every case, which clearly was not the circumstance, such retaliation is wholly improper. The proper manner in which to challenge investigative findings is through judicial process, and the established legal mechanisms – not ad hominem attacks on the investigators themselves in the public forum.

Despite this, the PTF's efforts did not diminish, and its professionalism to accomplish as much as possible did not wane. In the final month of the PTF's tenure, we completed five major corruption reports that had identified significant fraud and corruption, including a report on fraud in Iraq, elections, roads and rebuilding in Afghanistan, fraud and corruption in the Economic Commission of Africa in Addis Ababa, and in several matters involving high value contracts for transportation in Africa. The PTF staff professionally, and feverishly, worked until the very final hours of 31 December 2008 to complete its assignments, and issued 5 significant thorough and presentable reports that were sufficiently advanced that they could be pursued by the follow on internal and external authorities. As far as I am aware, significant follow up has only been made in one case, and that was after significant pressure-including from this Congress.

The PTF left 8 more reports in draft form, and 175 cases we could not reach because of time constraints. In three years, the PTF completed 327 investigations.

The UN Board of Auditors, writing with the notion in 2008 that the PTF would cease in 2009 and that the Investigations Division of OIOS would re-assume responsibility for fraud and corruption oversight, offered recommendations, acknowledged the skills within the unit, and the knowledge of the Organization gained over three years of effort, recommended that the "skills and competencies" and staff of the PTF, be incorporated into the Investigations Division. Despite a General Assembly resolution mandating the transfer of the PTF caseload and expertise to the Investigations Division, none of this occurred, contrary to the claims of OIOS and the UN Administration. The investigative staff members of the PTF were either passed over for positions created in the new financial crimes unit intended to replace the PTF or, forced out of the UN. Thus, several former PTF staff who applied for open vacancies, with a few exceptions, were not selected, and the few selected generally were subsequently forced out of OIOS or the unit. However, only one former PTF member remains in OIOS on a full term contract, and one on a short term temporary contract within the Office of Internal Oversight Services – and none in the new unit established to replace the PTF.

The Under Secretary General Ahlenius' vision for a Financial Crimes Unit was scuttled, in place of a non-descript unit simply known as "Unit 5," which, until recently had but a few investigators and none with serious white collar fraud experience. Management in OIOS refused to even acknowledge "fraud" in the title, and limited its mandate significantly. At one time, investigators were informed that they were not going to investigate parties "external" to the UN, including the tens of thousands of contractors that do business with the Organization.

Even worse, the former PTF investigators were subject to harassment and retaliation. Some were even the subject of investigations themselves for wholly spurious reasons, and when they were cleared by independent entities, no public mention was made of this fact.

After the closure of the PTF, the remaining cases, evidence, files and reports still in draft were transferred back to the Investigations Division of the Office of Internal Oversight Services, the permanent investigative body from which the many of the original referrals came. As I understand,

more than two years later, these cases have largely not been advanced. Effectively, all of these actions, conducted secretly and with little fanfare or attention, ends thorough investigations of procurement irregularities. As far as I further understand, only a few matters left from the PTF have been pursued-and only as a result of external pressure, and all the remaining cases have been left to languish. As proof of this fact, one needs only to read the Report of the Office of Internal Oversight Services to the UN General Assembly on its investigative work for 2009 and 2010, wherein no significant fraud or corruption investigation is reported.

The five reports issued by the PTF in its final days at the end of 2008 were all significant fraud or corruption cases. In one particular matter, in a fraud and embezzlement case, the investigation had traced significant sums of money that had been stolen by a UN official working in Iraq, and proceeds from a Jordanian bank account that had been utilized for the benefit of the official and her family. The more than 100 page report had been finalized in the waning days of December 2008, and we recommended that the privileges and immunities of the staff member be waived, and the matter referred to national authorities with jurisdiction over the matter. During the investigation, we were made aware that one national authority had an on-going criminal case that related to this matter, and that relevant materials in the possession of the UN have not been provided to this authority. As far as I am aware, I do not believe any criminal action has been pursued against the individuals involved in this matter. The incredible irony of this story is that the investigators, rather than the offenders, were the ones separated from the Organization.

I am often asked why is there no will in the Organization to pursue such cases, or address them when misconduct is identified. The short answer is that investigations that uncover fraud and corruption bring bad news, and bad news is not welcome news. The approach of the leadership of the Organization is to minimize such issues, and keep them from public view. The exposure of issues, problems, corruption and fraud, is seen as something that could threaten future funding of donors. Rather than receiving praise for uncovering fraud as a result of intensive oversight, investigators and the Investigation Unit are penalized for doing the right thing, thoroughly investigating fraud and corruption, and reporting on it –wherever it is found. Conducting investigations in the UN is not a popular undertaking, and is far from an effective means of career advancement. Thus, anyone with ambition in the Organization is much better off to pursue as little as possible. Such an approach is rewarded in the UN, and any efforts to identify and pursue fraud and corruption is punished. I do not mean to suggest that such an ideology is shared by all in the entire Organization. There are certainly competent and honest professionals who would rather take the approach of bringing such issues to light, embracing the problems and addressing them, rather than ignoring them. However, those in authority in the Organization largely subscribe to this philosophy. These are the individuals with the authority to appoint and promote.

The other structural problem in the United Nations is that oversight lacks true operational, budgetary and structural independence-despite language in resolutions to the contrary. OIOS is dependent upon the UN General Assembly for funding, positions and its mandate and on the Secretariat and Secretary General for selecting senior staff. At any time, the General Assembly can limit, refuse to fund, or end, the oversight body. While independence is stated in its mandate, to a certain degree, this is only theoretical, and not in fact the case. OIOS must have full operational, structural and budgetary independence to be truly independent and an effective oversight body.

Even so, investigative and audit capacity and independence is not sufficient. There must be a viable legislative framework in the UN that fully punishes financial misconduct, a will and ability to enforce such rules, and a competent judicial mechanism to hear and address cases. Further, the UN Administration must address recommendations for the waiver of privileges and immunities expeditiously, and waive such immunities in appropriate cases so criminal cases may be pursued by the appropriate national authorities. All UN staff, as well as all materials generated and in the possession of the UN, enjoy privileges and immunities – meaning they cannot be subpoenaed, and the UN cannot be compelled to turn them over to external bodies. Only the Secretary General has the authority to waive privileges and immunities of UN staff.

I am also often asked why national authorities simply cannot pursue such matters, especially of external parties, in lieu of an internal investigation and audit capacity within the Organization. As a prosecutor who focused for many years on international criminal cases, I can say that extraterritorial cases are some of the most challenging cases to make. First, cases are based on evidence, and evidence must be able to be gathered. The jurisdiction and reach of most national authorities is largely limited to its own borders, and a national authority seeking evidence, authority or jurisdiction in another country is required to proceed in most cases through formal process, and through the authority in that jurisdiction. While an investigative body internal to the UN does not have such powers as compulsory process (serve subpoenas and warrants), it is much freer to travel and act within the borders of its Member States. Thus, such a body could serve as a viable and effective complement to a national authority within that jurisdiction that could pursue cases following efforts of the internal audit or investigative entity. Evidence, the identity of witnesses, and witness statements could be turned over to national authorities through a waiver of privileges and immunities, and cases could be pursued much more thoroughly and expeditiously. In pursuing criminal cases, tracing assets and proceeds of crime, and identifying participants, speed is absolutely essential. Delays can have profound effects on the effectiveness of any follow on effort.

It is critical for me to emphasize that I entered the United Nations with no particular agenda, bias, preconceived notions about the United Nations, or views. After serving as Paul Volcker's Special Counsel and then Deputy Chief Legal Counsel, and before that for more than 13 years as a US federal prosecutor in the United States Attorney's Office prosecuting a wide range of complex criminal cases, including international fraud, money laundering and racketeering, I always took my obligation to serve the pursuit of justice quite seriously, and to follow facts and evidence wherever they might lead. To this day, I do not believe that the Organization is incapable of performing effectively, or that it is more at risk of corruption and fraud than any other institution. By virtue of its composition, its operational structure, and the fact that it operates in high risk environments, however, the United Nations is at significant risk to be victimized by and from financial malfeasance, theft and corruption because of the amount of funds it expends, where the funds are delivered, and the locations where it operates. The problem is how the Organization, including its most senior officials, addresses episodes of fraud and corruption.

In this regard, the most disappointing aspect of my experience in the Organization was not with what we found, but the way in which investigations were received, handled and addressed by the UN Administration and the way in which investigations were politicized by certain Member States. The Oil for Food bribery and fraud scheme, and the IIC investigation, are now distant memories, rarely spoken about in the halls of the UN buildings. Despite one of the largest fraud and corruption

schemes in history, important recommendations of the Volcker Committee for addressing fraud and corruption have not been implemented. To the contrary, with the expiration of the PTF, and the absence of qualified financial crimes investigators in , capacity has unquestionably reverted to pre-oil for food days, there is little capacity to investigate such matters, as well as very little will to do so.

In short, the incentives in the UN are perverted, the support for true investigations and oversight is lacking, and the philosophy of the leadership is to reward inaction rather than action, suppression rather than exposure, and punishment of whistle-blowers and investigators, rather than protection. It is time for serious action to correct these problems. Otherwise, history will no doubt repeat itself.